IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 52 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRI N.K. SHAH

Versus

THE COMMISSIONER OF INCOME TAX

Appearance:

MR KA PUJ for Petitioner No. 1

MR AKIL KURESHI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions have been referred for the opinion of this Court in respect of the assessment year 1984-85 :

1. "Whether on the facts and in the circumstances of the case, the income-tax Appellate Tribunal is justified in law in holding that there was no illegality in reopening of the assessment as the instructions No.1774 issued by CBDT are clarificatory in nature and rightly used as information by the Assessing Officer ?"

2. "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is justified in law in holding that the amount of incentive bonus is a part of salary under Section 17 of the Act and only those deductions are permissible which are allowance u/s 16(i) of the Act ?"

3. "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is justified in law in confirming the assessment order as framed, which also includes the disallowance of applicant's claim regarding 100% deduction of Additional Conveyance allowance, though no specific finding having been given in the the order ?"

2. As far as question No.1 is concerned, our attention is invited to the decision of this Court in case of C.I.T. Vs. Jawahar D. Dholakiya, (1995) 220 ITR 393, wherein this Court was required to consider an identical question. After hearing the learned Counsel for the parties, this Court has considered that Circular No.1774 dated 29.9.1987 / October 14, 1987 issued by the Central Board of Direct Taxes clarifies that incentive bonus was not deductible and could not be treated as 'information' within the meaning of Section 147(b) of the Income-tax Act, 1961. The Court accordingly held that reassessment proceeding was not valid.

Following the aforesaid decision, we are also of the view that the Tribunal was not justified in holding that there was any illegality in reopening of the assessment as the Circular No.1774 issued by the CBDT is clarificatory in nature and was rightly used as information by the Assessing Officer. We are of the view that the Tribunal has committed an error of law in giving

the aforesaid findings. Accordingly, our answer to question No.1 in the negative i.e. in favour of the assessee and against the revenue.

3. Coming to question No.2, in view of our answer to question No.1, question No.2 does not survive, however, even otherwise, the controversy raised in question No.2 is concluded by the decision of this Court in case of C.I.T. Vs. Kiranbhai H.Shelat and another, 235 ITR 635.

Hence, we answer question No.2 in the negative i.e. in favour of the assessee and against the revenue.

4. So far as question No.3 is concerned, it is clear that the Tribunal did not give any specific finding regarding disallowance of the assessee's claim for 100% deduction of Additional Conveyance allowance. We would have considered remanding the matter to the Tribunal for considering the assessee's claim for deleting this disallowance. However, learned Counsel Mr.Puj points out that for the subsequent assessment years, the Tribunal itself has allowed the assessee's claim for 100% deduction of Additional Conveyance allowance on merits. Mr.Puj further points that in this assessment year, the claim under this head was Rs.7,196/-.

5. Considering both the aforesaid aspects, we are of the view that looking to the smallness of the amount involved, the matter is not required to remanded to the Tribunal and we answer question No.3 in the negative i.e. in favour of the assessee and against the revenue.

6. The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta,J)
'Bhavesh'